

RESOLUTION NO. 2010-24

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING THE PURCHASE OF UPDATED CAD/RMS SOFTWARE FOR THE VILLAGE OF KEY BISCAYNE POLICE DEPARTMENT; PROVIDING FOR IMPLEMENTATION AND AUTHORIZING THE VILLAGE MANAGER TO COMPLETE THE PURCHASE OF THE EQUIPMENT AND EXECUTE AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 3.07(b) of the Village Charter, the Village Council desires to authorize an expenditure for the purchase of updated computer aided dispatch and comprehensive integrated records and management system (CAD/RMS) (the "Equipment") to be used by the Village of Key Biscayne Police Department; and

WHEREAS, the Equipment in-place now has become outdated and needs to be brought to compliance with state-mandated changes in the arrest and crash reports, which must now be transmitted electronically by the Village of Key Biscayne Police Department; and

WHEREAS, the Village previously acquired the initial software that comprises the Equipment, with funding as set forth in Village Resolution No.2005-5; and

WHEREAS, it is impractical to competitively procure the Equipment because the Village currently uses USA Software Inc.'s version of the Equipment, and because this newer version of the Equipment would build on that earlier purchase, and because the use of this newer version would not require significant retraining on the part of the members of the Village of Key Biscayne Police Department that utilize the Equipment; and

WHEREAS, the Village Council finds, upon advice from the Village Attorney, that no competitive bidding is required for the purchase of the Equipment pursuant to Village Code Section 2-85,

which authorizes the Council, by majority vote, to waive competitive bidding procedures if the Council determines that it is impractical to apply such procedures; and

WHEREAS, the Village Council finds that it is in the best interest of the Village to proceed with the purchase of the Equipment from USA Software, Inc. and enter into an agreement as indicated in this Resolution.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

Section 2. **Contract Approved.** That the purchase of the Equipment from USA Software Inc. as described in the Software Support and Maintenance Agreement, final attached hereto as Exhibit “A”, is hereby approved.

Section 3. **Purchase Authorized, Specification of Funds.** That the acquisition of the Equipment described in the Software Support and Maintenance Agreement, Exhibit “A” is hereby approved and authorized, subject to the restriction that the total cost of the Equipment authorized herein shall not exceed \$36,500.00. The funding source shall be the Capital Improvement Projects fund.

Section 4. **Implementation.** That the Village Manager is hereby authorized to take any and all action necessary to implement the purposes of this Resolution, and is authorized to sign any necessary purchase agreements, subject to the approval of the Village Attorney as to form and legal sufficiency.

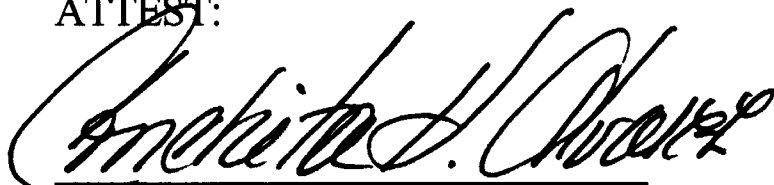
Section 5. **Effective Date.** That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 22nd day of June, 2010.



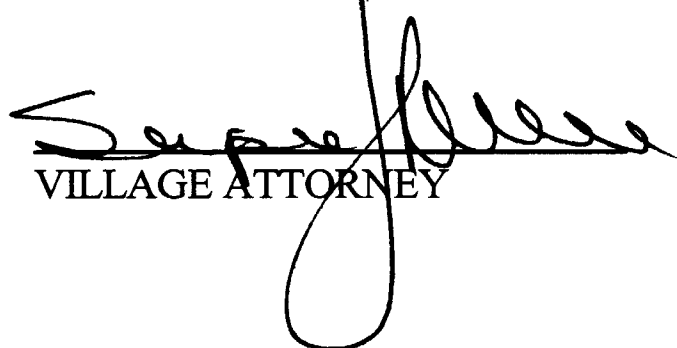
MAYOR ROBERT L. VERNON

ATTEST:



CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



VILLAGE ATTORNEY



Software Support and Maintenance Agreement

The following are the terms and conditions under which USA Software agrees to furnish and Customer agrees to accept software support services for the Licensed Program(s) listed on the attached Support Schedule A.

- I. **ELIGIBILITY REQUIREMENTS:** Services under this Agreement are applicable only to Information Management Systems Software purchased from USA Software commencing with Version 6.
- II. **TERMS & CONDITIONS:** At the time Customer licenses Licensed Programs(s) from USA Software, it may also purchase support services for the Licensed Program(s). All such services shall be upon the following terms and conditions:
 1. **Support:** USA Software will provide the following support:
 - a. Telephone support service to Customer for the purpose of assisting Customer with the application of the Licensed Program(s). Telephone Support Service is defined as "answering questions requiring a nominal amount of time, usually during the same telephone call" and will be available from 8:30 A.M. until 4:30 P.M., Mondays through Fridays (holidays excluded). Extended, 24 hour, 7 day per week coverage (24x7 support) is also available, for an additional charge, via an addendum to this agreement. In the event any telephone support requires an inordinate amount of time (over five minutes on any one problem or call) Customer may be responsible for the long distance telephone charges for such call(s).
 - b. Web-based support is provided where available. As an alternative to web-based support, modem communication support is provided. Customer must provide its own compatible modem and will be responsible for all long distance telephone connect time and charges. Customer is responsible for all aspects of configuring their site for communication between USA Software and the Customer site. This includes, but is not limited to, all hardware, internet access, firewall settings, and server access settings. Customer-provided copy of GoToMyPc may be required.
 - c. On site visits either to the USA Software site by Customer or to Customer's site by USA Software and services in addition to telephone service will be charged at the then current labor rates plus expenses. Customer will be informed in advance of incurring any charges. This service is provided only to Customers within the continental United States and Canada.
 - d. **DOES NOT INCLUDE:**
 - a. Restoration of any software and/or data on Customer system due to failure on the part of Customer to adequately backup software and/or data or protect same from virus attacks and/or spyware/adware related issues.
 - b. After hours, weekend, and holiday support which may be contracted for separately.
 - c. Maintenance of any Customer systems other than the Licensed Product(s). This includes, but is not limited to, security settings, hardware maintenance and configuration, network configuration, etc.
 2. **Fees:** Customer shall pay to USA Software an annual support fee in advance in the amount set forth in the USA Software invoice/statement accompanying this Agreement. Fees are payable to USA Software in Broward County, Florida and are subject to change without notice except for current agreements for a maximum of 12 months or until expiration date whichever period is shorter.
 3. **Term:** This Support Agreement shall be for a term of twelve (12) months as shown on the invoice/statement accompanying this Agreement.

4. Software Maintenance: USA Software shall distribute to Customer updated Licensed Program(s) and/or documentation as soon as they are commercially available. USA Software shall distribute to Customer any new versions, upgrades and/or other enhancements to the Licensed Program(s) which are released, in USA Software's sole discretion, during the maintenance term. Customer acknowledges that certain new versions, upgrades and/or other enhancements to the Licensed Program(s) may require either additional software, hardware or hardware updates, with respect to the Customer's original or current computer system(s), in order for the Licensed Program(s) to function and/or to allow Customer to gain the full benefits of said new versions, upgrades and/or other enhancements to the Licensed Program(s). All costs and responsibilities for such new or additional software and/or hardware shall be borne solely by Customer.

III. WARRANTY AND LIMITATION OF LIABILITY:

1. **EXCEPT AS STATED IN THE APPLICABLE LICENSE AGREEMENT, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES RESPECTING THE LICENSED PROGRAMS, THIS AGREEMENT AND THE SERVICES AND MATERIALS PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES AND REMEDIES SET FORTH IN THE APPLICABLE LICENSE AGREEMENT AND USA SOFTWARE, INC. SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, ORAL OR WRITTEN, EXPRESS OR IMPLIED. USA SOFTWARE, INC., ITS DISTRIBUTORS, DEALERS AND/OR AGENTS MAKE NO EXPRESS OR IMPLIED WARRANTIES TO CUSTOMER WITH REGARD TO THIS AGREEMENT, THE LICENSED PROGRAMS AND THE SERVICES AND MATERIALS PROVIDED THEREWITH, INCLUDING MERCHANTABILITY, FITNESS FOR ANY PURPOSE OR PROPRIETARY RIGHTS OF OTHERS. NEITHER OF THEM SHALL HAVE ANY LIABILITY OR RESPONSIBILITY TO CUSTOMER FOR DAMAGES OF ANY KIND, INCLUDING SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGE, ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, THE LICENSED PROGRAMS, OR THE SERVICES OR MATERIALS MADE AVAILABLE HEREUNDER. IN NO EVENT SHALL USA SOFTWARE, INC. BE LIABLE FOR ANY LOSS OR PROFIT OR ANY OTHER DAMAGES OF ANY KIND. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.**
2. USA Software will not be liable for any failure or delay in performance due in whole or in part to any cause beyond USA Software's reasonable control. In no event shall USA Software be liable to Customer for any claim, whether in contract or those that arose more than eighteen months prior to institution of suit thereon.

IV. GENERAL

1. Customer may not assign any of its obligations, rights or remedies under this Agreement and any such attempted assignment shall be null and void.
2. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.
3. Customer agrees that USA Software may perform such tests as USA Software shall deem reasonably necessary to monitor compliance with applicable software licenses at any time, with or without notice, during normal business hours.
4. That the Software License Agreement for the products covered herein and the USA Software Terms and Conditions of Sale are incorporated herein by reference and made a part hereof. That if any term of this agreement and the applicable License Agreement are inconsistent or contrary the applicable License Agreement shall govern.

5. This Agreement shall be deemed made and entered into in Broward County, Florida and shall be governed by the laws of the State of Florida. Customer agrees that venue for any suit or action arising out of or in connection with this Agreement, the Licensed Programs or any support or materials provided herewith, or any other matter involving USA Software, including but not limited to rescission, can and shall only be maintained in Broward County, Florida and Customer hereby submits to the jurisdiction of the courts in Broward County, Florida for any such suit and Customer hereby waives all rights to trial by jury.
6. Customer agrees that USA Software's entire liability, if any, for any cause whatsoever arising out of this Agreement shall not exceed the amount Customer actually paid to USA Software to purchase the support.
7. This Agreement constitutes the entire and sole agreement of the parties hereto and supersedes all prior agreements, understandings, oral or written, expressed or implied, with respect to the subject matter hereof. There are no contemporaneous oral agreements or understandings between the parties other than those contained or incorporated herein. This Agreement may not be amended or modified except in writing.
8. In the event any litigation is instituted by either party under or as a result of this Agreement, the prevailing party shall be entitled to its reasonable attorneys fees from the non-prevailing party.

Accepted and agreed to:

Customer name: Key Biscayne Police Department

Signature: 

Print Name: CHARLES R. TRESS

Street Address: 88 W. McKintyre St

City/State/Zip: Key, BISCAYNE, FL 33149

Telephone: 305 365 0503 **Fax:** 3/365 83 31

Date: 10-10-04

Not effective until accepted by an authorized representative of USA Software.

Accepted by USA Software on the 9 **day of** July, 2004.

By: 

Authorized USA Software Signatory

SUPPORT SCHEDULE A

This Support Schedule outlines the software (Licensed Programs) to be included with the USA Software Support and Maintenance Agreement provided to Customer as well as any customer-specific terms and conditions.

<u>Item #</u>	<u>Software Name</u>	<u>Quantity</u>
1	<i>CADFile@ IMS Computer Aided Dispatch</i>	1
2	<i>CrimeFile@ IMS Records Management System</i> <i>The following RMS modules are hereby covered:</i> <i>Incident Reporting/UCR</i> <i>Crash Reporting - Florida</i> <i>Field Interview Card Tracking</i> <i>Personnel</i>	1
3	<i>EvidenceFile@ IMS Evidence Management System</i>	1
4	<i>MobileFile IMS@ MDS Mobile Data System</i>	1
5	<i>MobileFile IMS@ eForms Field Reporting System</i>	1

Additional Terms and Conditions

1. Pursuant to Section II, Paragraph 4 of this agreement, USA Software, Inc. will update ALL of the existing software modules originally purchased by customer to the current production versions (Version 6) as of May 2010.
2. Pursuant to Section II, Paragraph 4 of this agreement, USA Software, Inc. will provide customer with Version 7 of our product line when it becomes available in 2010.
3. Other software modules not listed are classified as not supported under this agreement.
4. This agreement provides customer with 6 support calls (incidents) per year for any non-supported modules. There is no rollover of these calls from year to year.
5. USA Software, Inc. will provide customer, as part of this agreement, with our new CAD eMail Alert Feature that also includes the utility to automatically schedule and email/print Crystal Reports.
6. USA Software, Inc will assist customer in a consulting role via phone/online connection, in migrating your USA Software, Inc. software to your new servers. This will be a one-time event. Future software migrations will be billable at our then current rates.
7. USA Software, Inc. will provide customer with the current (May 2010) version of the Miami Dade Arrest Form Print Engine and assist in the setup of A-Form printer.
8. USA Software, Inc. will include, as a part of this agreement, a System Administrator Training Class for a single IT professional to be designated by the customer.
9. The term of this agreement shall be 36 months, commencing June 1, 2010.
10. The total fee for this agreement shall be \$36,500.00 and is payable within 30 days of the commencement of this agreement.